IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

Crl.Rev.Pet.No. 1060 of 1996(M)

CRA.47/1996 of SESSIONS COURT, KASARAGOD
CC.464/1994 of JUDL. MAGISTRATE OF FIRST CLASS-II, HOSDRUG

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REVN. PETITIONER - IST APPELLANT - IST ACCSUED:

K.V. KUNHIKANNAN, AGED 45 YEARS,
S/O. KANNAN MASTER, RESIDING AT
KANHANGAD SOUTH IN KANHANGAD VILLAGE.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.B.S.SWATHY KUMAR

RESPONDENT - RESPONDENT - COMPLAINANT:

K. PEETHAMBARAN, AGED 37,
S/O. KUNHIKORAN, RESIDING AT
KANHANGAD SOUTH P.O.,
KANHANGAD, HOSDRUG TALUK.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 1060 OF 1996

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Dated this the 16th day of January, 2007

O R D E R

First accused in C.C. No. 464 of 1994 on the file of the Judicial First Class Magistrate No.II, Hosdurg is the revision petitioner. Petitioner along with second accused were found guilty of an offence punishable under Section 500 IPC, convicted and sentenced to pay a fine of Rs.500/- each. In default of payment of fine, to undergo simple imprisonment for six months. They filed Crl. Appeal No.47 of 1996 before the Sessions Court, Kasargod. Learned Sessions Judge confirmed the finding of guilt as against first accused and acquitted the second accused. Challenging those concurrent findings, this Criminal Revision Petition is filed.

2. Respondent, P.W.1, filed a complaint before the learned Magistrate alleging that petitioner along with second accused committed offence punishable under Section 500 read with 34 IPC. In the complaint it was averred that the respondent went to the house of one Shyam Prakash to attend the betrothal

of his brother Shyam Sadan. When he reached the house, Shyam Prakash requested him to board into a bus which was parked near the house. He boarded in the bus and sat in a seat. At that time accused came there and asked him to alight from the bus. When the respondent alighted from the bus, first accused told him that he did not pay the subscription to the temple and hence they will not attend the function in case the respondent attend the same. It was also alleged that accused told Shyam Prakash that in case respondent is attending the function, they will not attend the function. That statement was heard by the persons assembled there and they formed an opinion that respondent is a man of bad character. It was further alleged that Shyam Prakash asked the respondent not to travel in the bus along with others. It was also averred that he was not invited for the marriage also.

3. Learned Magistrate took cognizance of the offence and summons were issued to the accused. When the accused appeared before the Magistrate, copies of relevant documents were furnished to them. Substance of accusation was read over

and explained to the accused. They understood the same and pleaded not guilty. On the side of respondent P.Ws.1 to 3 were examined, Exhibit P1 proved and marked. After complainant's evidence was over, accused were questioned under Section 313 Criminal Procedure Code. They denied all the incriminating circumstances brought out against them. On the side of accused, D.Ws.1 and 2 were examined. Learned Magistrate found both accused guilty of the offence charged, convicted and sentenced them as aforesaid. The learned Sessions Judge set aside the conviction and sentence imposed on the second accused and confirmed that of the first accused. Hence this Criminal Revision Petition.

4. The only question arising for consideration in this Criminal Revision Petition is whether the words alleged to have been uttered by the revision petitioner were intended to harm the reputation of the respondent. Respondent is stated to be a Government servant. He also claims to be a person involved in various cultural and political activities in the locality. It is his case that he was invited by D.W.1, Shyam Prakash, to attend the

betrothal of his brother Shyam Sadan. He deposed that he availed casual leave and reached the house of Shyam Prakash. At that time about 70 persons were assembled there for proceeding to the place where betrothal ceremony was fixed. Shyam Prakash asked all the persons including the respondent to board into the bus which was parked nearby. Respondent boarded into the bus. At that time revision petitioner asked the respondent to alight from the bus and he along with some others got down from the bus. Revision petitioner told respondent that since he was a person who had not paid subscription to the temple they will not attend the function in case respondent attend the function. He also deposed that revision petitioner informed Shyam Prakash that if he takes respondent to the bride's house, they will not attend the function. He further deposed that the said statement of revision petitioner was heard by the persons who assembled there and formed an opinion that respondent is a person of bad character.

5. It is an admitted fact that the members of the

Community to which respondent belongs are liable to pay certain amount as monthly subscription to the temple. According to the respondent it was not compulsory that every member of the Community shall pay subscription. During cross-examination respondent had admitted that he is a member of Thiyya Community and there is a temple belonging to the Community and the temple committee consists of members of that Community. It was admitted by him that members of his Community used to pay subscription and it is called as Koottayi and there is a person who was authorised to collect the amount. He is called Koottayikkaran. It was also admitted that the amount is collected to meet the day to day affairs of the temple and the festival. It was admitted that during the relevant period he committed default in payment of subscription. It was also admitted that revision petitioner is the President of the temple committee and he has no other enmity towards the respondent. He deposed that he does not know whether the temple committee had taken a decision not to allow a defaulter to take part in functions in which the other members of the Community

are attending. Specific case put forward by the respondent is that he was invited by Shyam Prakash. Though Shyam Prakash was cited as a witness for respondent, he was not examined. He was examined by revision petitioner as D.W.1. D.W.1 deposed that he had not invited the respondent to attend the betrothal and in fact he had invited only the father of the respondent. Respondent came to attend the function on his own accord. According to D.W.1 revision petitioner informed him that in case respondent attends the function, other members of the Community will not attend the function. P.Ws.2 and 3 deposed that because of the action of the revision petitioner, mental strain was caused to the respondent. P.W.2 has no case that he heard revision petitioner saying to respondent that he is a defaulter and revision petitioner will not attend the function in which respondent is attending. There is absolutely nothing in the evidence of P.W.2 to show that he formed any bad opinion about respondent. On the other hand, the specific case is that the statement of revision petitioner created a mental pain to the respondent. P.W.3 is another witness examined to prove the

offence. He had no case that because of the utterance of revision petitioner he formed any bad opinion about the respondent. On the other hand, his case was that the general public have very good opinion about the respondent. There is absolutely nothing in the evidence of P.W.3 to show that by the utterance of the alleged words any person who assembled there formed any bad opinion about the respondent lowering his status among others. Even if the entire evidence of P.Ws.2 and 3 is accepted as such, no ingredients of the offence under Section 499 IPC is established in this case. The respondent was a defaulter and he had failed to pay the subscription to the temple. Revision petitioner, who is the President of the temple committee had only stated that in case respondent attend the function, he will not attend the said function. The statement that respondent was a defaulter of subscription to the temple is true. Both the courts have not considered the evidence of P.Ws.2 and 3 in the real perspective. Merely because revision petitioner uttered that he will not attend the function in case the respondent also attend the same as he is a defaulter, it is not possible to hold that the

words spoken to by the revision petitioner was a defamatory statement. Courts below have not considered the evidence of D.W.1 also. There is no legal or acceptable evidence to hold that revision petitioner had made any defamatory statement. So the conviction and sentence imposed on the revision petitioner by the courts below are liable to be set aside.

In the result, Criminal Revision Petition is allowed. Conviction and sentence imposed on the revision petitioner are set aside. He is found not guilty of the offence charged under Section 500 read with 34 IPC and acquitted of that offence. Fine, if any, paid by the revision petitioner will be refunded to him. Bail bond, if any, executed by him shall stand cancelled.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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O R D E R

16TH JANUARY, 2007